



Security Council

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Letter dated 6 April 2016 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

In reference to the letter dated 7 March 2016 from the Permanent Representative of Ethiopia to the United Nations, Tekeda Alemu, addressed to the President of the Security Council, please allow me to provide the following clarifications concerning the occupation by Ethiopia of sovereign Eritrean territory, including the town of Badme.

It will be recalled that article 4 of the Algiers Peace Agreement of 12 December 2000 provided for the creation of a commission, the Eritrea-Ethiopia Boundary Commission, in order to determine the location of the boundary between the two neighbouring countries in a final and binding award. Article 4, paragraph 2, of the Algiers Agreement states the following:

The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

In accordance with that mandate, the Commission completed and delivered its final delimitation award on 13 April 2002 and immediately commenced the process of demarcation. The final and binding demarcation phase was as clearly applicable as the delimitation phase. However, Ethiopia immediately began to obstruct the Commission's demarcation activities and the placement of pillars on the ground conducted on the basis of the historical delimitation line that the Commission had clearly identified in its award of 13 April 2002. The Commission consistently described the obstruction by Ethiopia as nothing more than an expression of dissatisfaction with the Commission's substantive findings. In this regard, the President of the Commission, Elihu Lauterpacht, in a letter dated 27 November 2006 addressed to the then Minister of Foreign Affairs of Ethiopia, Seyoum Mesfin, stated that the truth of the matter appeared to be that Ethiopia was dissatisfied with the substance of the Commission's delimitation decision and had been seeking ever since 2002 to find ways of changing it.

Rejecting the intransigence and obstruction shown by Ethiopia, and in fulfilment of its responsibility and mandate under the treaty, the Commission demarcated the Eritrea-Ethiopia border by means of highly accurate and technically precise coordinates. In this regard, the Commission wrote to the parties concerned



and the Secretary-General, Ban Ki-moon, informing them that it had fulfilled its mandated responsibilities and unequivocally concluded its arbitration process. It stated that it had determined that the boundary would automatically stand as demarcated by the boundary points listed in the annex to its letter and that the mandate of the Commission could be regarded as fulfilled.

On 30 November 2007, the Commission also sent to the parties signed copies of 45 maps with a scale of 1:25,000 containing the demarcation of the boundary by coordinates and deposited a copy with the Geospatial Information Section of the United Nations for public reference. Thus, no matter what Ethiopia says, the border between Eritrea and Ethiopia is delimited and demarcated. Final and binding means final and binding.

Ethiopia has constantly attempted to disguise its non-acceptance of the final and binding delimitation and demarcation decisions of the Commission with a variety of transparent stratagems, none of which has any legal basis. First, it claimed to be seeking an "interpretation" of the delimitation award in a lengthy request to the Commission that (as the Commission explicitly noted in its rejection of the Ethiopian request) was nothing more than a substantive complaint against the Commission's decision about the location of the Eritrea-Ethiopia legal boundary. Then it began to resettle Ethiopians who had never lived in the border region into the territory that the Commission had just recognized and awarded as sovereign Eritrean territory, ignoring the Commission's order that this settlement programme be immediately terminated. Its current stratagem, presented as a "dialogue", is to demand that Eritrea negotiate the location of the boundary, claiming that "the Commission had made errors" in its delimitation and demarcation award that the two countries had to rectify.

Nothing in the Algiers Agreement gives Ethiopia the right to reject, question and amend the final and binding delimitation and demarcation decisions of the Commission or to impose conditions on Eritrea. Neither Eritrea nor Ethiopia has the power to veto the Commission's final and binding delimitation and demarcation decisions. Ethiopia is not entitled to demand concessions of any kind as a *quid pro quo* for vacating sovereign Eritrean territory, including the town of Badme. Ethiopia is clearly demanding that Eritrea cede sovereign Eritrean territory to Ethiopia in a process that it calls a "dialogue". Such "dialogue" is nothing more than holding Eritrean territory hostage in order to extract concessions.

If Ethiopia wants to improve relations with Eritrea, it must respect its obligations under the treaty and the Charter of the United Nations by withdrawing from the sovereign Eritrean territory that it occupies, including the town of Badme. If Ethiopia is allowed to shirk its responsibility by challenging the authority of the Commission, a body which has been fully mandated by the parties to make a final and binding decision and endorsed by the Security Council, then Eritrea will face an infinite series of additional demands, with Ethiopia requesting and imposing new conditions under the pretext of dialogue.

The precedent that condoning such behaviour by Ethiopia would set is immensely dangerous to the resolution of boundary conflicts and the stability of international borders, undermining the respect that States must give to the peace treaties that they sign, in compliance with Chapter VI of the Charter. No matter how much Ethiopia wishes to exert some unlawful veto power over the Commission's award under the guise of demanding "dialogue", such power is totally inconsistent

with the terms of the final and binding Algiers Agreement signed by the leaders of the two countries and endorsed by the Security Council at the end of the border war. The Security Council should make it clear that the behaviour of Ethiopia is unacceptable. Ethiopia must respect the Charter, its treaty obligation and the final and binding 2002 delimitation and 2007 demarcation decisions of the Commission. Ethiopia must comply with article 4, paragraph 15, of the Algiers Peace Agreement, which states that:

The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party.

The Security Council must therefore urge Ethiopia to withdraw unconditionally and immediately from sovereign Eritrean territory, including the town of Badme. The United Nations and the African Union must guarantee the respect of the Algiers Agreement. Last but not least, justice must be upheld. No nation big or small should be allowed to occupy the sovereign territory of another country.

In conclusion, I want to assure members of the Security Council that, once Ethiopia vacates sovereign Eritrean territory, including the town of Badme, Eritrea will be ready and willing to normalize its relations with Ethiopia and to engage in constructive dialogue on issues that are relevant and beneficial to the peoples of Ethiopia and Eritrea as well as to the stability of the Horn of Africa and the Red Sea region.

I should be most grateful if the present letter were circulated as a document of the Security Council.

(Signed) Girma Asmerom Tesfay
Ambassador
Permanent Representative